

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION, ROOM NO. F12
CAUSE NO. 49F12-0905-MI-020717

CYNTHIA A. SOAMES,

Petitioner,

v.

INDIANA DEPARTMENT OF NATURAL
RESOURCES and THOMAS A YOUNG/
YOUNG OIL COMPANY,

Respondents.

FILED

(189) OCT 01 2009

Elizabeth R. White

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND JUDGMENT

This cause comes before the Court on a Verified Petition for Judicial Review filed by the Petitioner. The issues on judicial review were fully briefed by the parties, and oral argument was heard on September 10, 2009. The Court now enters its Findings of Fact, Conclusions of Law and Judgment.

FINDINGS OF FACT

1. Respondent, the Indiana Department of Natural Resources ("IDNR"), is the agency of the State of Indiana charged with implementing and administering the laws and regulations governing wells for oil and gas purposes. Ind. Code § 14-37 *et seq.*
2. Respondent, Thomas A. Young d/b/a Young Oil Company ("Young"), was the operator of three (3) permitted wells (Permit #49219, #49220 and #49221) located in Miami County, Indiana.
3. Petitioner, Cynthia A. Soames ("Soames"), owns the three (3) wells previously operated by Young.
4. On August 16, 2007, IDNR issued three (3) Notice of Violation letters to

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Young stating that the wells were inspected on August 15 and 16, 2007 and found to be in noncompliance with Ind. Code § 14-37 *et seq.* and 312 IAC 16-1 *et seq.*

5. IDNR ordered that the wells be: operated, plugged and abandoned, or the owner or operator could obtain a temporary abandonment permit for the wells per 312 IAC 16-5-20.

6. On September 10, 2007, Young petitioned the Natural Resource Commission ("NRC") for review of the violation letters due to an inability to comply with the ordered actions due to the litigation of the wells' lease and the landowner's actions.

7. On April 9, 2009, the NRC issued a Findings of Fact and Conclusions of Law with Final Order.

8. On April 14, 2009, the NRC issued a Notice of Final Order of the Natural Resources Commission modifying and adopting the April 9, 2008 Findings of Fact Conclusions of Law with Nonfinal Order of the Administrative Law Judge ("NRC's Final Order").

9. The NRC's Final Order required Young to properly plug and abandon each of the wells pursuant to Ind. Code § 14-37 *et seq.* and 312 IAC 16 *et seq.*; Young not to remove any equipment associated with the wells from Soames' property; and Soames not to interfere with entry by Young to properly plug and abandon the wells.

10. The parties stipulated that Young "has offered to cap or plug the subject wells" and that Soames has denied Young entry to her property to cap the wells.

11. As owner of the wells, Soames can obtain a permit to operate the wells, seek deferment, and/or temporary abandonment but, to date, Soames has not obtained a permit.

12. To the extent any of these findings of fact are construed to be conclusions of law, they are hereby included as additional conclusions of law. To the extent that the conclusions of law are construed to be findings of fact, they are hereby included as additional findings of fact.

CONCLUSIONS OF LAW

1. This case involves judicial review of an agency determination under the Administrative Orders and Procedures Act ("AOPA"). Ind. Code § 4-21.5-5-1 *et seq.*
2. As the party seeking review, Soames carries "the burden of demonstrating the invalidity of agency action." Indiana Code § 4-21.5-5-14(a). A court may set aside an agency action only if it determines that the action is:
 - (1) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence.

Ind. Code § 4-21.5-5-14(d); *Ind. Dept. of Envtl. Mgmt. v. Lake County Solid Waste Management District*, 847 N.E.2d 974, 981 (Ind. Ct. App. 2006), *trans. denied*.
3. In a manner consistent with courts of review, this Court's judicial review must be confined to the agency record. Ind. Code § 4-21.5-5-11.
4. A reviewing court may neither try the case de novo nor substitute its judgment for that of the agency. Ind. Code 4-21.5-5-11; *Indiana Dept. of Environmental Management v. Schnippel Const., Inc.*, 778 N.E.2d 407 (Ind. Ct. App. 2002).
5. The Court of Appeals of Indiana has stated that when reviewing an agency decision, "the court is bound by the findings of fact made by the agency if those findings are supported by substantial evidence." *Hamilton County Department of Public Welfare v. Smith*, 567 N.E.2d 165, 167-168 (Ind. Ct. App. 1991). The Court of Appeals has also stated:

Findings of fact are clearly erroneous when the record lacks any facts or reasonable inferences to support them. *Lawson v. Raney Mfg., Inc.*, 678 N.E.2d 122, 126 (Ind. Ct. App. 1997), *trans. denied*. In determining whether the findings of fact are clearly erroneous, we consider the evidence most favorable to the judgment along with the reasonable inferences to be drawn therefrom. *Id.*

Save the Valley, Inc. v. Indiana Department of Environmental Management, 724 N.E.2d 665, 668 (Ind. Ct. App. 2000).

6. The Supreme Court of Indiana held that “[a]n agency decision may be reversed by an appellate court only where it is purely arbitrary, or an error of law has been made.” *Indiana Civil Rights Commission v. Delaware County Circuit Court*, 668 N.E.2d 1219, 1221 (1996) (citing *Indiana State Bd. Of Public Welfare v. Tioga Pines Living Center, Inc.*, 622 N.E.2d 935, 939 (Ind. 1993), *cert. denied*). The Court went on to explain that “[a]n action of an administrative agency is arbitrary and capricious only where there is no reasonable basis for the action.” *Id.* (citing *Natural Resources Comm’n v. Sugar Creek Mobile Estates*, 646 N.E.2d 61, 64 (Ind. Ct. App. 1995), *trans. denied*).

7. Ind. Code § 14-37-8-1 provides:

- (a) An owner or operator shall plug and abandon a well that:
 - (1) Is completed as a nonproductive well;
 - (2) Ceases to produce oil or natural gas; or
 - (3) Is no longer operated for the purpose for which the well is permitted;unless the owner or operator is authorized to delay the plugging and abandonment of the well under section 8 [IC 14-37-8-8] of this chapter.

8. Evidence in the administrative record shows that since the termination of the lease in 2005, the wells have not and are not being produced or used “for the purpose for which the well[s] is permitted.” Ind. Code § 14-37-8-1(a)(3) provides that a well that “is no longer operated for the purpose for which the well is permitted” is to be plugged and abandoned. Therefore, the wells must be plugged and abandoned.

9. The conclusions in the NRC’s Final Order are based on substantial evidence and the provisions in Ind. Code § 14-37 *et seq.* and 312 IAC 16 *et seq.* Therefore, Soames has failed

to meet her burden because the ALJ had a reasonable basis for the decision that the owner and/or operator have a statutory duty to plug and abandon the wells.

10. Ind. Code § 14-37-8-8 and 312 IAC 16-5-20 allow temporary abandonment of a well if the owner or operator chooses to defer and/or temporarily abandon plugging and abandonment under Ind. Code § 14-37-8-1.

11. Ind. Code § 14-37-8-8 and 312 IAC 16-5-20 also require the owner or operator to seek approval from IDNR within sixty (60) days of the termination of operations of the well or sixty (60) days from the expiration of the deferment period in order to defer plugging and abandonment and/or temporary abandonment.

12. More than sixty (60) days has passed since operations were terminated for these wells and neither the owner nor operator sought a deferment or temporary abandonment.

13. Pursuant to 312 IAC 16-5-20, an owner or operator who seeks deferment and/or temporary abandonment must comply with several technical requirements and the posting of a bond that must be maintained on the well as required under the rule.

14. The lease governing the three (3) wells was terminated in 2005; therefore, the operator does not have the authority to continue to be on the owner's property to maintain the requirements listed in 312 IAC 16-5-20.

15. The NRC correctly relied on substantial evidence to hold that "[b]ecause its lease had been terminated ... Young Oil was prospectively precluded from either operating the subject wells or seeking their temporary abandonment. As an operator, however, Young Oil has a statutory duty to properly plug and abandon the subject wells." Further, the NRC correctly pointed out that the law does not allow the owner to require the operator to seek approval from IDNR for temporary abandonment.

16. The conclusions in the NRC's Final Order are based on substantial evidence and the provisions of Ind. Code § 14-37-8-8 and 312 IAC 16-5-20. Therefore, Soames has failed to meet her burden because the ALJ had a reasonable basis for the decision that Young is precluded from seeking temporary abandonment at this time and Soames has no legal authority to require Young to seek temporary abandonment.

17. Pursuant to the record, the wells have not been produced or used in at least four (4) years, and there is no evidence as to when Soames will be producing or using the wells again. Ind. Code § 14-37-8-1 contains no provision that allows for the wells to remain open if the owner or operator desires to operate the wells again on some undetermined date in the future. However, Indiana law does allow for an owner to obtain a permit that would allow her to seek temporary abandonment if that is her intent, and Soames has failed to do so.

18. The NRC correctly holds that pursuant to Ind. Code § 14-37-8-1, IDNR has the authority to require the owner or operator of the wells to properly plug and abandon the wells which are not, and have not been for many years, operated for the purpose for which they were permitted and Soames has no legal authority to preclude this from happening.

19. If the operator is unable to plug and abandon the wells, Soames as owner has a statutory duty to plug and abandon the wells under Ind. Code § 14-37-8-1. Therefore, since the owner can be held legally responsible for the plugging and abandoning of the wells, the NRC had the legal authority in its Final Order to require her not to interfere with the plugging and abandonment or be required to complete the plugging and abandonment at her own expense.

20. After stating that Soames is not to interfere with the plugging and abandonment of the wells, the NRC's Final Order provides that Soames "may, at her own expense, select an Indiana licensed professional geologist (or another qualified professional approved by the IDNR)

to observe and record the plugging and abandonment of the subject wells." The NRC's Final Order does not require Soames to hire a geologist or another professional or require that this be done before she can observe the activities. The NRC merely states she may hire such a person. The Final Order does not prohibit Soames from personally observing and recording the plugging and abandonment activities on her property.

21. The NRC's Final Order is not (1) arbitrary, capricious, an abuse of discretion; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence.

JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of Law, the NRC's Final Order is hereby affirmed, and the Verified Petition for Judicial Review is denied.

Dated: October 1, 2009

Michael D. Feele
Judge, Marion Superior Court
Civil Division, Room No. F12

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